

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, November 17, 1999, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Russ Bayer, Steve Duvall, Barbara Hopkins, Linda Hunter, Gerry Krieser, Patte Newman, Tommy Taylor, Greg Schwinn and Cecil Steward; Kathleen Sellman, John Bradley, Ray Hill, Mike DeKalb, Steve Henrichsen, Rick Houck, Jennifer Dam, Nicole Fleck-Tooze, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair, Russ Bayer, called the meeting to order and welcomed Kathleen A. Sellman as the new Director of Planning. He then requested a motion approving the minutes for the meeting held November 3, 1999. Motion to approve made by Steward, seconded by Duvall and carried 9-0: Bayer, Duvall, Hopkins, Hunter, Krieser, Newman, Taylor, Schwinn and Steward voting 'yes'.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

November 17, 1999

Members present: Bayer, Duvall, Hopkins, Hunter, Krieser, Newman, Taylor, Schwinn and Steward.

The Consent Agenda consisted of the following items: **COUNTY CHANGE OF ZONE NO. 192; COUNTY MISCELLANEOUS NO. 99003; CHANGE OF ZONE NO. 3214; MISCELLANEOUS NO. 99010; USE PERMIT NO. 107A; SPECIAL PERMIT NO. 1322E; SPECIAL PERMIT NO. 1527A; SPECIAL PERMIT NO. 1809; SPECIAL PERMIT NO. 1810; SPECIAL PERMIT NO. 1811; SPECIAL PERMIT NO. 1812; FINAL PLAT NO. 99022, SUMMER HILL ORIGINAL ADDITION; FINAL PLAT NO. 99029, PINE LAKE HEIGHTS SOUTH ADDITION; FINAL PLAT NO. 99034, HIGH POINTE NORTH COMMERCIAL PARK ADDITION; FINAL PLAT NO. 99042, NORTH CREEK 3RD ADDITION; AND FINAL PLAT NO. 99043, NORTH CREEK 4TH ADDITION.**

Item No. 1.1a, County Change of Zone No. 192, Item No. 1.1b, County Miscellaneous No. 99003, Item 1.1c, Change of Zone No. 3214, Item No. 1.1d,

Miscellaneous No. 99010 and Item No. 1.7, Special Permit No. 1811 were removed from the Consent Agenda and scheduled for separate public hearing.

Hopkins moved to approve the remaining Consent Agenda, seconded by Steward and carried 9-0: Bayer, Duvall, Hopkins, Hunter, Krieser, Newman, Taylor, Schwinn and Steward voting 'yes'.

Note: This is final action on Special Permit No. 1809; Special Permit No. 1812; Summer Hill Original Addition Final Plat No. 99022; Pine Lake Heights South Addition Final Plat No. 99029; High Pointe North Commercial Park Addition Final Plat No. 99034; North Creek 3rd Addition Final Plat No. 99042; and North Creek 4th Addition Final Plat No. 99043, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

SPECIAL PERMIT NO. 1811
FOR A CABLE COMMUNICATIONS BUILDING
ON PROPERTY GENERALLY LOCATED
AT NO. 61ST AND PLATTE STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION: November 17, 1999

Members present: Steward, Newman, Schwinn, Duvall, Taylor, Hopkins, Krieser, Hunter and Bayer.

Planning staff recommendation: Conditional approval.

This item was removed from the Consent Agenda at the request of Michael Rierden.

Proponents

1. Michael Rierden appeared on behalf of the applicant, Time Warner. He pulled this from the Consent Agenda in order to request an amendment to Condition No. 2.1.1.5 to read as follows: "Revise the elevations/building design to provide more windows so as to blend better with the abutting residential uses, or similar treatment to the satisfaction of the Planning Director."

There was no testimony in opposition.

Staff agrees with the proposed amendment.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 17, 1999

Steward moved approval of the Planning staff recommendation of conditional approval, with the amendment to Condition #2.1.1.5 as requested by the applicant, seconded by Krieser and carried 9-0: Steward, Newman, Schwinn, Duvall, Taylor, Hopkins, Krieser, Hunter and Bayer voting 'yes'.

COUNTY CHANGE OF ZONE NO. 192;
COUNTY MISCELLANEOUS NO. 99003;
CHANGE OF ZONE NO. 3214; and
MISCELLANEOUS NO. 99010, TO AMEND
THE TEXT OF THE LANCASTER COUNTY ZONING RESOLUTION,
THE LANCASTER COUNTY LAND SUBDIVISION RESOLUTION,
THE CITY ZONING ORDINANCE AND THE CITY LAND
SUBDIVISION ORDINANCE, TO REQUIRE THAT
ALL ELEVATIONS AND TOPOGRAPHIC DATA FOR
SUBDIVISIONS AND FLOODPLAIN DEVELOPMENT
PERMITS BE SUBMITTED IN NORTH AMERICAN
VERTICAL DATUM (NAVD) 1988.

PUBLIC HEARING BEFORE PLANNING COMMISSION: November 17, 1999

Members present: Steward, Newman, Schwinn, Duvall, Taylor, Hopkins, Krieser, Hunter and Bayer.

Planning staff recommendation: Approval.

These items were removed from the Consent Agenda and scheduled for separate public hearing at the request of Commissioner Hunter.

Nicole Fleck-Tooze of the Planning staff appeared to answer questions.

Hunter wants to know the effect of this conversion of ½ foot on property that was not previously in the floodplain. Fleck-Tooze advised that the .5 feet is the amount one would need to add to the 1929 Vertical Datum to reach the 1988 Vertical Datum. That is just the amount that needs to be used for the conversion. The range in difference across the county is closer to .25 ft., or three inches. This means that the most that one could be off if they used one figure on the higher or the low end of the range would be three inches. We looked on the high end of the range so, if anything, you would be off to the high side and protecting structures more than what needed to be. This will not change the boundaries of the floodplain. The only thing it would affect is how high you need to elevate your structure.

There was no testimony in opposition.

Public hearing was closed.

COUNTY CHANGE OF ZONE NO. 192

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 17, 1999.

Schwinn moved to approve, seconded by Hopkins and carried 9-0: Steward, Newman, Schwinn, Duvall, Taylor, Hopkins, Krieser, Hunter and Bayer voting 'yes'.

COUNTY MISCELLANEOUS NO. 99003

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 17, 1999

Schwinn moved to approve, seconded by Hopkins and carried 9-0: Steward, Newman, Schwinn, Duvall, Taylor, Hopkins, Krieser, Hunter and Bayer voting 'yes'.

CHANGE OF ZONE NO. 3214

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 17, 1999

Schwinn moved to approve, seconded by Hopkins and carried 9-0: Steward, Newman, Schwinn, Duvall, Taylor, Hopkins, Krieser, Hunter and Bayer voting 'yes'.

MISCELLANEOUS NO. 99010

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 17, 1999

Schwinn moved approval, seconded by Hopkins and carried 9-0: Steward, Newman, Schwinn, Duvall, Taylor, Hopkins, Krieser, Hunter and Bayer voting 'yes'.

CHANGE OF ZONE NO. 3212

TO AMEND THE LINCOLN MUNICIPAL CODE

TO REVISE REQUIREMENTS FOR OFF-PREMISE SIGNS.

PUBLIC HEARING BEFORE PLANNING COMMISSION: November 17, 1999

Members present: Steward, Newman, Schwinn, Duvall, Taylor, Hopkins, Krieser, Hunter and Bayer.

Planning staff recommendation: Approval.

Mike DeKalb of Planning staff submitted additional information for the record, including a letter from Sterling Communications, Inc., in opposition; a letter in support from Jon Carlson, President of Near South Neighborhood Association; a letter in support from the Woods Park Neighborhood Association; and a letter from Jane Raglin Holt in support, with 129 signatures.

Proponents

1. Mike DeKalb of Planning staff gave a history on this proposal. In the last two or three years, there has been rapid growth of billboards. This caused complaints to the elected officials, who chose to take some action. The Council had requested an increase in spacing to 300', which came through Planning Commission and was put on pending at City Council. The Mayor requested a moratorium be adopted on issuing permits for off-premise signs of 150 sq. ft. or more. That moratorium expires on 2/10/2000. The Mayor formed a task force of 15 members that met weekly for seven weeks, resulting in the proposal before the Commission today. Under the proposed ordinance, all off-premise signs would become a conditional use, having to meet specific conditions, limited to 10 years. The proposed conditions include:

- Each new sign must swap-out an existing nonconforming sign of the same square footage.
- 800 ft. radial spacing to all other off-premise signs.
- 800 ft. spacing from schools, colleges, cemeteries and parks.
- Not allowed in Capitol View Corridor Overlay District (Capitol Parkway West)
- 800 ft. spacing from entranceway corridors.
- 75 feet from all residential districts (same as required today)
- Sensitive zones, such as historic districts, landmarks, trails and Capitol View, would require a special permit hearing.
- Lighting shall be limited to 5:00 p.m. to midnight, down lighting only. This would apply to all off-premise signs.

DeKalb displayed GIS maps showing all of the existing Lamar and Gray outdoor advertising signs of 150 sq. ft. or more; the permitted districts and the signs that exist in those districts; relative location of existing signs to cemeteries, parks and trails, schools and campuses and the Capitol View corridors, religious institutions and the historic districts and landmarks in the City.

Hopkins wondered if there is a map showing what locations remain after the implementation of the proposed ordinance. DeKalb showed a map of the areas that would be left to locate additional signs or new signs. Hopkins wondered about Highway 2. DeKalb explained that there are no additional locations along Highway 2 because there is

very little commercial and industrial zoning along Highway 2. DeKalb also pointed out that existing signs would be grandfathered and could remain in place for the life expectancy of that sign.

2. Rachel Murray, resident of Hawley Area Neighborhood, 2524 S Street, and member of the Hawley Area Neighborhood Association, testified in support. She submitted a letter from the Hawley Area Association signed by Board Members and Officers, and also members of the Association in support of the proposed ordinance. This ordinance allows for the protection of neighborhoods, while allowing for future billboard development. Hawley strongly recommends that redevelopment areas such as the Hawley Neighborhood and the Hawley Historic Landmark District be designated as "sensitive zones". In other words, they would like to see the ordinance definition of "sensitive zones" be broadened to include "redevelopment areas". The ordinance should anticipate potential conflicts and allow for special permit hearings. Unhindered billboard development becomes a problem. The Hawley neighborhood is undergoing many positive changes--families are moving in, properties are being improved, community spirit and pride are growing. It is truly an example of "urban renewal" that Lincoln can be very proud of. Because the Hawley neighborhood is located in the heart of Lincoln, it provides welcoming corridors to Downtown and the University, a welcome map which leaves a distinctive impression on visitors. If our goal is to redevelop the Hawley community, it makes no sense to undermine those efforts by poor coordination between local business planning and redevelopment plans. She recommends that redevelopment areas be designated as sensitive zones. She showed pictures of the No. 27th Redevelopment Area, depicting some of the conflicts created by the billboards in relation to the new lamp posts. This type of conflict needs to be addressed and resolved in special permit hearings.

3. Peggy Struwe, 530 No. 25th Street, in the Hawley Historic Landmark District, testified in support. She is also a member of the Hawley Area Association and the newsletter publisher/editor and Vice-President of the Association. She would like a section added to deal with areas under revitalization. There should be a public hearing before a new permit is issued in an area undergoing revitalization. As a part of revitalization on North 27th Street, the City bought out several large signs at thousands of dollars, yet there was no protection for more signs going in. As a result, there is a very large sign on North 27th that has been newly installed. This was a waste of taxpayer money and is the reason why we need to have redevelopment areas added to the ordinance as "sensitive zones".

4. Bill Morris, member of the Billboard Task Force, testified in support. The Task Force represented the industry as well as citizens. His interest was as a citizen driving around the city seeing these billboards pop up like mushrooms. The Task Force engaged in passionate debate, but debate that was very reasoned, and came up with a proposal on a vote of 11-4 (2 against and 3 abstentions), which represents a very powerful consensus of the people who served on the Task Force and he believes it represents a balance of those interests. The sign industry may contend that at this point this kind of ordinance is not necessary because there is only one major player in the market. Mr. Morris disagrees.

The problem that Lincoln encountered initially had to do with an outsider coming in, permitting like crazy and forcing existing players in the market to permit in order to compete. What we had essentially was somebody from the outside who did not share the community values that we have and that Imperial Outdoor Advertising had, forcing Imperial (and then Lamar), in order to keep the playing field level, to compete the way that they were competing. That is the danger we would continue to face in the absence of some rational response to billboards. There is no telling who Lamar could be purchased by in the future; there is no telling whether existing management is going to be replaced by someone from another state whose economic directives are coming from another state.

Morris believes the citizens of Lincoln have a duty and obligation to protect what we have or at least to define what we have. He does not believe this ordinance will draw up the cost of advertising. The “monopolistic bug-a-boo” is not something he believes the City needs to worry about. There is a glut of signage in this city right now. There are blank signs and public service announcements which are symbols of unsold sign space. There aren't very many places left in this city to put additional signs. The point is that there are enough now. As the city grows, there will be more locations for signs. When you look at the maps, you will see that the signage is highly concentrated. This ordinance will dilute that concentration. The ordinance limits further excessive proliferation. It prevents the excesses that we have seen in the past. It will protect the sensitive areas that we earmarked in this city as being special places. It will provide for stewardship of the visual environment, which we all share. We should not be subject to unbridled visual assaults. We cannot turn a billboard off or close a billboard like we can a magazine. This ordinance strikes a rational balance between that element of involuntariness and the legitimate need for advertisers to get their message to the people of the city of Lincoln.

Steward asked about the research by the Task Force into other communities for comparisons. Morris stated that an extensive amount of material was provided from over a thousand other communities across the United States, and from interest groups ranging from pro-advertising to anti-sign.

Hunter inquired whether the areas that appear to be left are non-conducive to signage. Morris believes that all the best areas were taken first and what is left are the least desirable areas.

4. Bob Ripley, also a member of the Billboard Task Force, testified in support. He is also Manager of Restoration Promotion for the State Capitol and serves on the Capitol Environs Commission, which is referenced in the ordinance in several locations. He advised that most specifically, on page 5 of the proposed ordinance, lines 19-20, there is reference made that no off-premise sign shall be permitted in the areas designated a Capitol View Corridor Overlay District. To insure the accuracy of that statement, Ripley stated that he will take this information to the Capitol Environs Commission to make sure that the NCEC wants to be so specific as to exclude all outdoor signage through those view corridors.

History tells him that just because they are in the view corridor doesn't mean that it is a visual impediment to the intent of the view corridor. Its location and relative elevation can in fact sometimes allow for no substantial impact on the view corridors. He will get something from NCEC in writing with respect to these two geographic areas--the Capitol Environs district and the Capitol View corridors--so that we don't become more exclusive with regard to this legislation than is intended.

Ripley believes the overall language of the ordinance is very good, but he wants to get a clarification from NCEC to make sure the specific language as written is as they would propose since it is their specific task to oversee all areas that impact the Capitol. Ripley did not want the Commission to delay this legislation. He will get input back from the NCEC and provide it to the Planning Commission and City Council.

5. David Wiebe, current President of the Lincoln Chapter of the American Institute of Architects and member of the Task Force, testified in support. He believes Lamar has requested by their actions that we provide better guidance for the erection of billboards. Lamar has shown that it intends to build as many billboards in as many places as possible. They have overwhelmed our city with overscaled, closely-spaced billboards, and they have shown a disregard for the places and entrances to our city that makes Lincoln so beautiful. He is specifically in support of the 10-year license permit for each sign. Zoning protections for the areas that the task force identifies as "sensitive areas" are also very necessary. However, he would like to see 27.69.030(c) p.2, lines 21-22, strengthened. It allows any sign, including billboards, to rotate. The task force felt that there should be no motions on billboards. This should be eliminated for off-premise signs. In 27.69.035(b)(6), it allows billboards to be located within 75' of residential zoning while all other sensitive areas are restricted to 800'. 75' is the width of a typical residential lot, so that would be like having a very large sign 300 to 700 sq. ft. just a block away from a residential area. That is much too large. 700 sq. ft. billboards are too large to be allowed in many of the zoning districts (H-3, for example). On-premise signage maximum is 500 sq. ft., or one-third of the building size. Why should billboards be allowed to be larger than on-premise signs?

With regard to entrances to the city, Wiebe believes 1/4 mile is too short of a distance and it allows billboards to be located in unbuilt open areas at all these entrance ways. He is opposed to billboards dominating those entrances.

Hopkins asked whether Wiebe wanted to be specific about 75' versus 800'. Wiebe would prefer 300' as opposed to 800'.

Steward believes the Interstate federal signage restrictions take over in the case of the 1/4 mile concern.

6. Kevin Clark testified in support. He is a member of the design community, a concerned citizen and was a member of the Task Force. He wants to control visual pollution, protect the visual character of our city and reduce the number of billboards.

Billboards ambush us by using the public realm to force us to see ads that we do not consent to see. Courts have accepted that billboard control improves traffic safety. The US Fourth Circuit Court of Appeals states that, "No empirical studies are necessary for reasonable people to conclude that billboards pose a traffic hazard, since by their very nature they are designed to distract viewers and their passengers from maintaining their view of the road." Major Media of the Southeast v. City of Raleigh. They detract from our city's beauty and the courts continue to uphold the right of cities to ban billboards in the name of aesthetics. In 1950, Alaska chose to be billboard-free. Over a thousand cities have enacted strict billboard controls to protect their scenic character, quality of life and local economy. Tampa's law takes down all of their billboards. Tuscon's maximum size became 75 sq. ft. as compared to our maximum size of 700 sq. ft. The shortcoming in the law is that it does not provide adequate protection for neighborhoods. The required 75' from residential zoning districts will allow many neighborhood corners with a Kwik Shop or gas station to have at least one billboard. These billboards dominate the view away from the neighborhood shopping centers and away from the neighborhoods. The newer planned areas of the city through the zoning is making our new neighborhoods billboard free, but let us not turn our back on our neighborhoods that made this city. Clark proposes that the spacing between billboards and residences be 300'.

7. Martin Gaskell, astronomer at the University, testified in support. He is strongly in favor of as many restrictions as possible, but he would particularly like to see that the lighting be shining down on the billboards and not be allowed to shine up into the sky. It is a sheer waste of money to have light shining in the sky and it will spoil the natural beauty of the night sky. This has an impact on our teaching and research mission at the University because we have telescope on campus. We also do not need to have billboards illuminated all night.

8. Lynn Darling appeared on behalf of the Audubon Society, as a citizen and as a task force member. She approves the increase to 300' from residential uses. She believes the maximum size should be 350 sq. ft. The proposal does not address the issue of the billboards being tax free. She believes the money could be used to take down the Capitol Parkway and Normal Blvd. sign. Between 1957 and 1977, eight polls were taken across the United States, and 70% and more were anti-billboard, referring to it as visual pollution, emotionally irresponsible safety hazards, hampers economic growth. When Pittsburgh took down the billboard signs the property values rose 255%. There are communities across the U.S. that are getting new businesses because they do not have billboards. Vermont, Maine, Alaska and Hawaii are billboard-free, and their business has not dropped. Information can be obtained from <webmaster@scenic.org>.

9. Eric Hubl, 624 So. 51st Street, supervisor at Hyde Observatory and a member of the Task Force, testified in support. He believes the Task Force was a diverse group that worked very well together. In every sense of the word, the Task Force recommendation was a compromise on everyone's part. On page 6, lines 13-15, with regard to the lighting requirements, Hubl showed a night view of the United States from lights that shine upward

into the sky. There is an extreme amount of wasted energy being thrown up into the air. He also showed a picture of the Los Angeles night sky in 1908 versus 1988, rendering the research capabilities of the 100 inch telescope obsolete. Every one of the pinpoints of lights could have been prevented by having shields on top of them so that the light illuminates down on the ground. The type of lighting being used on the billboards in Lincoln is a 400 watt very bright white light fixture, designed with a little bit of a glare shield on the back, but most of it blasts upward onto the sign face. He explained the foot candles being used on the billboards in Lincoln and which go up into the sky causing light pollution, making astronomy very difficult. Down lighting makes sense because it eliminates upward glare. Focused and shield lights can direct the beam more uniformly onto the billboard surface. Time limits can help save energy to reduce the cost to operate.

Bayer is frustrated by the lights of the baseball diamonds in Mahoney Park. Hubl agrees that they are blatant but they were built prior to the existing recreational lighting ordinance which is in place.

Opposition

1. Scott Morton, Sales Manager for Lamar Advertising, testified on behalf of the Lamar employees to voice concerns about the proposed ordinance. Lamar Advertising has a 30-year history of responsible growth in Lincoln. It has basically the same employees and same management that Imperial Outdoor Advertising had. Recently, in a move to eliminate an irresponsible competitor from the industry, Lamar purchased Gray Outdoor to keep from doing further damage to the reputation of the industry. Lamar has always taken great pride in listening to the concerns of the public. When receiving complaints about a potential site, they did not build it.

As far as customers, Lamar has over 400 customers in the City, 85% of which are local businesses. Many cannot afford other media. There is no substitute for outdoor advertising for some. If we eliminate billboards, it will give other forms of advertising more leverage to increase their rates. More choices allow advertisers to create a better marketing plan. One would be hard-pressed to find any business person who would opt for fewer advertising choices. Lamar has always done a lot of public service—\$116,000 in 1999, including the Tom Osborne Teammates Mentoring Program across the state.

Lamar has also shown a real commitment to aesthetics by upgrading the appearance of their structures. Some of the signs in other cities look dilapidated and weathered and Morton assured that this would never be the case in Lincoln.

As far as the proposed language for the off-premise signage, Morton urged that the Commission look long and hard at the proposal. Morton suggests that this is not a cap and replacement proposal, but an outright ban. It contains so many restrictions that they will never be able to replace the signs they lose to public and private development. The end result will be a drastically reduced inventory which will lead to increased rates. The

livelihoods of the Lamar employees are at stake here. This proposal goes well beyond cap and replacement and will eventually put Lamar out of business.

Steward noted that Morton talked about public service announcements being state-wide. This indicates that Lamar does have state-wide business. Morton acknowledged that they have an office in Casper which services the North Platte area and McCook and points to the west. Steward wondered whether this proposal puts Lamar out of business just in Lincoln or outstate? Morton's response was that his job could be eliminated. Steward wondered whether Lamar believes they can do some growth with the growth of Lincoln. Morton stated that the effect of the 800' spacing and all the sensitive areas leaves very few areas for new signs in Lincoln's current service area. Steward believes there will be increased service areas with Lincoln's growth, but Morton believes those new areas will be eliminated as well with the 1/4 mile corridor protection.

Chair Bayer advised that Commissioner Hopkins is a representative of the Teammates Mentoring Program, but she makes no decisions on the advertising.

Hunter wanted to know how many billboards Lamar has across the state. Morton was only aware of the numbers in Lincoln, and they have 167 structures with the purchase from Gray. He is not privy to the information across the state.

Bayer wanted to know how many other smaller structures they have in Lincoln. Morton believes they would have somewhere in the area of 70 of the 6' x 12' signs in Lincoln. Morton concurred that they do have approximately 500 faces. Lamar represents above 90% of the signs in Lincoln. Morton stated that they lose 5 to 6 of the large structures as well as 5 to 6 of the smaller structures per year. Relatively speaking, Morton advised the Commission that Lamar has fewer signs per capita than other markets of their size. Bayer inquired whether Lamar has enough signs today. Morton believes that they have enough today, but if they lose 5 or 6 a year, they will not. Bayer asked for Morton's interpretation of this ordinance as to its effect as the city grows. Morton stated that Lamar would love to be able to add 3 or 4 signs per year, as they have done in the past.

Bayer asked Morton to indicate what leads Lamar to believe this ordinance will put Lamar out of business in the next several years. Morton's response was that the theory behind the "cap and replacement program" is that you replace the signs that you lose every year. When you throw in all the restrictions with the 800' spacing, it removes all of the correctly zoned areas so you have no where to put the signs you lose. In essence, you shrink.

Bayer asked if Lamar pays taxes on the signs or the land the signs are located upon. Scott Stuart, former owner of Imperial Outdoor Advertising, advised that the company pays personal property taxes on all the sign structures.

In response to a question asked by Taylor, Morton advised that Lamar lost 6 faces so that the police station could be built on No. 27th Street. They lose them to private and/or public

development. Many times the lease expires and the landowner will decide to sell the property. Under the proposed ordinance, no area exists to rebuild that sign which was lost after all of the restrictions are applied.

Hunter asked about the percentage of business that Lamar has in the Omaha market. Morton suggested that it might be 5% of their revenue at the most. He did not know how many sign faces they have in Omaha.

2. Mark Hunzeker appeared on behalf of Lamar Outdoor Advertising in opposition. In the form as presented, the ordinance does not represent what they consider to be a consensus of the task force or any other group. A review of the report and the bullet points that were the consensus of the task force will show, in the opinion of Hunzeker, that the bullet points may have been incorporated into this report but incorporated in a way Mr. Peo described as having been considered, but took the perspective that it should start as being the most restrictive based on the recommendations, primarily because it is not possible to add more restrictions than are introduced along the way without going back to the Planning Commission for additional review. Hunzeker understands that Mr. Peo took the approach that he needed to make the most restrictive interpretation of the bullet points as he could in order to avoid having to come back to the Planning Commission.

Hunzeker reviewed the zoning districts where off-premise signs are located—B-1, B-3, highway commercial and industrial. Those districts permit, as a matter of right, the kinds of things that don't immediately conjure up aesthetically pleasing uses, i.e. parking lots, marinas for the sale, service and storage of motor boats, car washes, hotels and motels, food storage lockers, bottling works, mini-warehouses, automobile sales, vehicle body repair shops, storage yards, heavy truck and equipment sales, farm machinery sales, motor truck terminals, mobile home sales, etc. By special permit in those districts there are a lot of things that are not attractive, such as broadcast towers, public utilities substations, wind energy conversion systems, extraction of sand, gravel and soil, bulk storage of petroleum products, batch concrete facilities, limited landfills, asphalt plants, etc. These are the zoning districts in which off-premise signs can be located. To pick out off-premise signs as being the aesthetic blight on the landscape strikes Hunzeker as being a little beyond most people's sense of aesthetics.

Hunzeker then reviewed the effects of this ordinance. Nearly all existing off-premise signs will become nonconforming uses. This is a downzoning of historic proportion. He has not seen a single change in the text that has that sweeping of an effect on any other use in 20 years. It will place a cap on a number of off-premise signs at the current level. This is a regulation that is not imposed on any other business. This is a growing community. Under the proposed ordinance, this industry will not be permitted any kind of growth. There is no cap on such things as salvage yards, used car lots, body shops, etc., but we are capping this industry. In order to get a permit for a new sign, the application has to include the description of an existing nonconforming sign to be removed. Any new signs that replace old nonconforming signs will be limited to a 10-year license. Thus, this ordinance will force

Lamar out of business. Even if the signs can be replaced, it is a “going out of business” ordinance. An 800' radial spacing requirement means that you can get one sign within a circular area of about 46 acres. The current spacing is one for every 300' measured lineally along the same street frontage. The spacing from parks, schools and cemeteries has a similar effect. A 5 acre neighborhood park, if it's square, takes up 98 acres when you apply those spacing requirements. The Capitol View corridors take up substantial other areas. Downtown from 10th to 14th and to P is eliminated. A quarter mile on either side of the corporate limits and 800' from those major entrances to the city is also eliminated. Setbacks of 75' from existing residential zoning districts is greater than any required yard in any of those zoning districts. A salvage yard in an I-1 district would have less of a required setback than these signs. The H-4 zoning district has a 50' setback. All of the rest are 30' as a maximum yard requirement, and most of the side yard requirements are much smaller. With regard to the sensitivity zones, 800' on either side of every bike trail in the city is eliminated. There are bike trails all over town.

3. Tim Cowell, Property Manager for Lamar, showed a map of the current zoning areas that allow signs and a map of the areas that would be left after the implementation of the proposed ordinance. Many of the larger areas have an absence of major roads. Billboards need to be in high traffic areas. In 1974, Nebraska became a “bonus state” where a sign cannot be viewable from the Interstate, which also reduces the amount of areas that are remaining.

Bayer wanted to know the effect of the 10-year license. Hunzeker suggested that the 10-year limitation applies to new signs, which is a very strong disincentive for taking any existing nonconforming signs down and replacing them with a sign that only has a 10-year license.

Bayer clarified that there are about 200 structures existing today all over the community, and Lamar loses about 5 of those structures a year, and they could not replace those existing structures in their current location under this ordinance. Hunzeker agreed and the areas that are left do not represent suitable locations for the new structures. Bayer believes that Lamar is indicating that this ordinance will not hurt their existing business, but it will hurt the growth and sustaining of the existing business. Cowell concurred and pointed out that currently there are very few zones being created in the new growth areas that allow off-premise signs. Cowell clarified that Lamar has 166 of the larger illuminated structures.

With regard to the future service area, Hunzeker stated that over the last several years, we have created very, very few B-1 or B-3 zoning districts; we have created very, very few H-1, H-2 and H-3 zoning districts; we've created a handful of H-4 districts and very few I-1 districts. Most of the new commercial development is taking place in B-2, B-5, O-3 or I-2 or I-3 type districts and some H-4, but for the most part, we are not creating new zoning districts out there that permit off-premise signs. The fact that the city will grow is true, but we are not creating new zoning districts that will permit the replacement of these signs.

Bayer referred to the Duteau property at So. 27th and Pine Lake, which was H-4. Bayer wondered if an off-premise sign could be allowed on that property in view of the residential area. Cowell advised that before the moratorium took place, he met with Planning staff and there are covenants in that area that do not allow the off-premise signs. Hunzeker pointed out that these off-premise signs are also subject to the property owner's consent and any other private restrictions that exist, particularly on the south side of town.

Hopkins inquired about the property ownership where the signs are located. Cowell indicated that Lamar has two signs where the property owners own the structures. The rest are leased. Hopkins believes the property owners can charge whatever they want to lease the property for the sign. Cowell concurred.

Hunter knows there has been a lot of new residential and industrial to the west of the City and wondered whether those might be areas for future signs. Cowell clarified that it is difficult to do "future build" when the sign has to be removed in 10 years. Cowell further clarified that he understands that the permit cannot be renewed. It can be re-applied for, but that requires removal of another sign. It's death by attrition. Hunzeker referred to p.4, line 13-14, "The administrative permits shall automatically expire ten years from their date of issuance and may not be renewed." In relation to a future build, Cowell also advised that the cost of building one of these structures can be in the neighborhood of \$40,000, so to build one in hopes that someday someone will want to advertise on it is not acceptable. Future build is a risky endeavor.

Hunzeker offered a compromise to remedy this concern. Lamar is sensitive to the concerns that have brought this ordinance forward. In fact, Lamar was one of the first to recognize it and to suggest amendments to the sign code back in May of this year.

As a compromise, Hunzeker proposed a series of amendments. Lamar will agree to a "cap and replace" ordinance. This is a huge concession and there are no other businesses that have been asked or agreed to zero growth in their business. However, to live under a cap and replace ordinance, a reasonable set of criteria for new signs is required.

With regard to spacing, Lamar's preference was for a 500' lineal spacing requirement. Lamar would propose, however, a combination of lineal and radial spacing which would represent the greater of 300' radial or 500' lineal spacing. In other words, you can't just go around the corner and put another sign up. It would be substantially more restrictive than the existing ordinance but would give some ability to replace signs in areas which arguably are appropriate for signs.

Lamar would propose no spacing requirement from parks, schools and cemeteries. There are just too many. This additional burden of 800' radius just simply eliminates too much land. This refers to p.5, lines 13-18.

Hunzeker also suggested that there be no ban on the downtown area. The B-4 is a district that allows virtually any legal use and it seems that a downtown area is an area where a sign ought to be permitted. Hunzeker also proposed no ban on the entry corridors. Billboards on roadways coming into the city serve a legitimate function to direct people and to enable them to find things like restaurants, motels, etc.

Hunzeker requested that bike trails be eliminated from the sensitive zones.

With regard to lighting, Lamar would like to be able to maintain up-lighting on the signs. From Lamar's perspective this is a serious issue from a safety perspective. Down-lighting puts all of the electrical components of the sign above the heads of the people out there working on the sign; it also puts you in a position of having any misaligned lights putting glare in the face of a driver along the street as opposed to shining upward into the air. Lamar needs to be able to be creative and if you have the light shields on the top, you cannot be creative with the shapes going out and beyond the perimeter of the rectangular boards to allow some creativity. Hunzeker submits that we have a number of areas where significant lights exist shining into the sky all of the time, i.e. ballfields, State Capitol, flags, buildings, etc., all over town. Lamar has a significantly lower light bill than many other uses such as car dealerships which are lit 24 hours a day.

Hunzeker requested to eliminate the period of time between midnight and 5 a.m. as being impermissible to light signs rather to specifically say they can only be lit from 5:00 p.m. to midnight. This would enable them to be lighted for morning drive times such as in this time of year.

Hunzeker also requested to insert a height limitation in the H-3 district of 45', which was there before and was just an oversight in this draft.

Hunzeker believes this represents a compromise which will allow Lamar to continue in business and to have reasonable alternatives available under a "cap and replace" type ordinance.

Hopkins asked Hunzeker to explain again the rationale for objecting to down-lighting. Hunzeker stated that it is unsafe to have all that electrical apparatus over the heads of people who are working on the signs. Misaligned lights will reflect glare into the lights of drivers on the street rather than up in the air; and it enables more creativity with the shape and design of the sign. The structures are worked on at least once a month. The industry standard is up-lighting. Hunzeker suggested that they could entertain some language that the lights they currently use be directed onto the sign. Most of the structures in Lincoln are illuminated with one 250 watt bulb. Hunzeker also suggested that some language could be added to put limitations on the level of illumination at the perimeter of the board.

Hopkins stated that she will want two more weeks to look at this.

One of Hunzeker's amendments deletes lines 6-7 on p.5, "The off-premises sign shall be removed within 30 days following the expiration of the permit." Bayer inquired as to why this is an issue. Hunzeker explained that the intent is that if they lose a sign, whether by expiration of a lease, a storm blows it down or some development comes along, and they don't have an immediate replacement location, that when they find a replacement location they can point to that sign that was lost and use that one for replacement. As the ordinance is currently worded, they have to identify a sign that it is in existence and it has to come down in exchange for the new one.

Bayer does not understand what's wrong with being consistent throughout the ordinance with the distance. Hunzeker noted that today they have 300' lineal distance. Lamar is proposing the greater of the two--300' radial or 500' lineal. Bayer suggested applying that universally. Hunzeker suggested that just because of the sheer numbers of schools and parks, when you start putting those kinds of spacing requirements around those areas, you eliminate the only zoned areas in that vicinity.

3. Scott Stuart, proud seller of Imperial Outdoor Advertising to Lamar Corporation, testified in opposition. Lamar does not owe him any money. His interest is in the community based on what he knows about this industry. He wants to be an advocate for what he considers to be the best interest of our community. He has heard many things that are not true. He hopes the Commission will consider the facts and find out what the facts are. The issue has been "greed". The Smith family in Lincoln was very greedy, along with the Gray family. If they had not had that greed we would not be here today. Over half of the structures that belonged to Gray have now been acquired at a cost of 6 million dollars to the Lamar Corporation and are on the Smith property. Imperial chose not to lease from the Smith family because the prices were economically unviable. They came in as raiders without regard for our city. He owned the company for 24 years with the philosophy, "if it's legal and if it's moral, we'll do it." These guys did not endorse that and now Lamar is left holding the bag. The same people who embraced the Imperial credo are still at Lamar. The current proposal punishes the existing company for the misdeeds of others. It is unfair and bad policy. To solve this problem, he proposed an idea for good policy--just allow perhaps two permits with any single landowner in a single year. It is important to make sure we all understand that outdoor advertising is a commercial enterprise that belongs only in commercial zones. But commercial protection is no different than residential protection. To outlaw a legitimate business from a commercial zone is no different.

We need to make positive, not punitive changes, based on fact, not emotions.

Hunter noted that Lamar automatically got 37 new locations when they bought Gray, so they are years ahead right now. Speaking from experience, Stuart stated that those structures are not in locations that are desirable--there is no traffic. The Gray guys came in strictly because they had a difference of opinion with the Lamar people. They came in to strip the Lamar people.

Hunter then commented that if these billboards are in locations that no one would want, how did they provide competition for Lamar? Mr. Stuart stated that they didn't provide any competition for Lamar. Lamar bought them so that they would go away.

Bayer asked Stuart to envision what it means to the private businesses in the community to take away this venue of advertising. Stuart believes very strongly in the freedom of choice. The first amendment rights are protected. It's a known right. Nobody is arguing that there isn't a place for regulation in the industry, but let's regulate it within the framework of our community and society so that we can sustain our system.

4. Kelvin Hullet, appeared on behalf of **Lincoln Chamber of Commerce**, in opposition to the current form of the ordinance. The Chamber of Commerce is very interested in this issue. The Chambers does have members who purchase outdoor advertising and provide that service. Hullet also served on the task force. He does not believe this proposal is an ordinance to reasonably regulate billboards, but a situation that forces a company out of business. Hullet requested that the Commission favorably consider the amendments being proposed by the opposition.

5. Doug Carr, Advertising Federation of Lincoln, testified in opposition to any effort to restrict truthful advertising of a legal product or service. Visitors to the city use billboards to navigate to some of the smaller or less known businesses. It provides an effective way to use the market place. Lamar is in favor of some tighter regulations to avoid the Gray situation, and he believes Lamar is trying to work with the community to solve the problem. Censorship is contagious.

6. Buss Whitehead, President of Whitehead, Inc., testified in opposition. He does not own any billboards or lease any property for billboards. He does not believe this ordinance should be passed. He believes in the law of supply and demand and the free enterprise system. The number of people who want to advertise will dictate the number of billboards. He enjoys billboards. Outdoor advertising is both informational and entertaining. He suggested that the light poles and telephone poles on South 27th Street from A to Van Dorn are as much visual pollution as any billboard and they are dangerous. If people in this room want to help the city, talk to your local pole people and have them bury those lines. It is not just billboards that are causing problems.

7. Sandy Crosby, Vice-President of Media Services at Bailey Lauerman, a local advertising agency, testified in opposition. If outdoor advertising is removed, it would be devastating. Outdoor advertising is the only media left to entertain a mass audience. There are very few places where we can actually target the mass number of people in the city. In addition, it is the most cost effective method of reaching a large number of people. It is extremely entertaining. What other way can you reach geographically the people that are most likely to see your message? Especially for the small advertiser, outdoor is extremely important. It is an inexpensive method of reaching your potential customers; it is great for the tourism industry. The people at Lamar Outdoor that she has worked with have proven themselves over the years to be extremely upstanding citizens and she

agrees that they are being unfairly treated here—suffering from a company coming in and taking advantage of Lincoln as a whole and Lamar in general. The advertising community is very much opposed.

Steward asked what percentage of Bailey Lauerman's Lincoln based accounts are outdoor advertisers? Crosby guessed at maybe 50% of their clients. She did not have an answer for the percentage of dollar volume, and she believes it would probably be very low because it is such an efficient and inexpensive media versus television and radio.

8. Bob Norris, President of Nebraska Neon Sign Company, testified in opposition. The thing that troubles him about the proposal is that our business community is made up of many small segments. This ordinance not only incrementally does away with a viable division of a larger business that employs people in Lincoln, but it also establishes a monopoly. He is not in the outdoor advertising business. This ordinance is a very negative statement to free enterprise in Lincoln. He encouraged the Commission to unanimously send a signal to free enterprise that we are open for business and vote against the proposal.

9. Charlie Claus, President of LIBA, testified in opposition. LIBA had a representative on the task force who worked very hard to come forward with restrictions that could be palatable and used by outdoor advertisers. However, he is opposed to the taking of property rights that this ordinance would take. People need to have the ability to use property as they see fit. The capping and reusing restrictions do not allow this. If you apply restrictions to other business, you would have the same challenge.

Response by the Applicant/staff

Hopkins inquired what the challenges and the outcomes were in states where outdoor advertising has been eliminated. Rick Peo of the City Law Department does not know if there were legal challenges or not. There are various jurisdictions that have adopted total bans. The ability to adopt a total ban is constitutionally legal. Sometimes the ordinance has failed because of the exceptions. The areas that are banning signs are allowing the existing signs either to stay or they have to have some type of provision to compensate the owner through time. Anything allowed to remain is grandfathered in Nebraska.

Hopkins believes that we put the people who own the land in an amazing situation to charge anything they want to charge. Peo suggested that to be "supply and demand" and the amount of space you need.

Peo acknowledged that this is a draft that was intended to be fairly restrictive. The task force recommendations were really just concepts as to what should be included. He attempted to do so, but there was no specific direction on the spacing from other activities so he picked 800'. He tried to be consistent. This is just the starting point he chose. It is designed so that the process can go forward with debate and have some flexibility. We

are on a fast track. The moratorium has a short expiration date; there was not enough time to work through the task force for a consensus on the specificities because of that short timeframe.

Newman believes the proposal is discriminatory against the inner city. As the city grows and establishes zones on the outside, those zoning areas do not allow billboards. How is this happening? How do we deal with it? Mike DeKalb explained that the zoning districts in the inner city reflect how it was built. The B-4 district was written as a catch-all district to reflect all the things that are downtown. B-3 was a mixed use district, with zero yard setback, etc., so it was written and designed to reflect what existed. In the new growth areas, the perception is that we want higher design standards, etc. The newer districts were designed to reflect that concept. Many of the newer districts, i.e. B-5, do not allow billboards.

Newman inquired about the regulation prohibiting billboards along the Interstate. Peo believes that limitation is under the Beautification Act. DeKalb further noted that those regulations have been in place since the 1979 zoning ordinance.

Peo advised that the new ordinance needs to be effective February 10, 2000, as that is when the moratorium expires. He needs some type of recommendation to the Council as soon as possible.

DeKalb advised that the administration prefers that the Planning Commission proceed; that the Planning Commission is a forum to accept ideas and issues; they would not like to have this held at Planning Commission because the Council and administration will need some additional time as well.

Hopkins moved to defer for two weeks, seconded by Newman. Hopkins wants additional time to review the proposed amendments and the discussion that has been held today. She understands the timing issue, but she needs two weeks.

Steward is opposed to the motion. He does not think two weeks is going to affect this. We've had a committee that has been working for months; it was put together in a representative fashion; we have a proposal on the table with support and opposing testimony; and we've heard the concern about the timeline. We need to have the debate as long as it takes today and move it on. This is one recommendation. We are not the final voice.

Schwinn agreed with Steward. We have had all the testimony we are going to get; he also believes this whole issue was created by the politicians and there will be a lot of politics that occur now. We need to move it along. He does not see that anything will change in two weeks.

Hunter also agreed. She is prepared to spend the time to discuss this and move it forward. She does have a concern about allowing the City Council the time they need.

Motion for continued public hearing and administrative action on December 1, 1999, failed 1-8: Hopkins voting 'yes'; Steward, Newman, Schwinn, Duvall, Taylor, Krieser, Hunter and Bayer voting 'no'.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

November 17, 1999

Schwinn moved approval, seconded by Steward.

Duvall expressed his disappointment that there was not more discussion in the ordinance about aesthetics. The way it is written we are saying we don't want outdoor advertising. He thinks we've missed these points on this urge for the fast track. We're missing the key elements.

Steward does not believe it is true that aesthetic considerations have been without input or representation. If you look at the general recommendations that came from the task force, on page 118, there are aesthetic issues to a very large extent that frame the background, the need and the criteria for specific recommendations. We have heard at least one of the proponents indicate that aesthetics in the districts where they are allowed are not an issue or concern and he takes exception to that point of view. To assume that nothing in the H districts or the business districts has any need for consideration of aesthetics is incorrect. Any facility or activity within those contexts can have an aesthetic concern. He believes aesthetics have been considered.

Steward does not necessarily agree with everything that has been put into this ordinance. He believes there ought to be an opportunity for renewal. With regard to 800' versus 500' or 300', he does not know what is right. The idea is that we regulate a spacing and a distance characteristic. Maybe at this point it is something less than 800', and he does acknowledge the point that 800' radii all over the city does use up a lot of land as potential. There is a place for outdoor advertising but he believes the industry is in serious change. We have to keep in mind that free enterprise is what got us into this mess in this town at this point in time. He is concerned about the community interest. If the business and business climate and the technologies of marketing and advertising are changing (and he believes that they are), we will see less and less static advertising. His concern is, what is the best we can do for the situation for now and not think of this as a now and forever perfect piece of legislation. Let's get it under control and do better than what we have now. It is visual pollution. It is not a matter of downzoning—it is a matter of increased regulations, and increased regulation seems to be what the community is asking for at this point.

Newman looks at it from a traffic safety standpoint and it comes down to aesthetics and do we really want billboards all over the place? We do need to limit the numbers. We have traffic engineers in this city that say we cannot put signs downtown, but at the same time we have billboards all over the place. It's also involuntary advertising that we can't get away from. We can turn off our radios and televisions and throw away the junk mail. She sees in the community that we have local small business owners who are regulated as to how big their signs can be in front of their businesses. When those signs are in the shadow of an enormous billboard, she thinks it is prejudicial. We are being really, really prejudicial in saying we can dump anything we want inside of the city, but the outskirts are protected by certain zoning. We need to level the playing field and share the wealth.

Hunter has a real conflict with the concept of why billboards are allowed to be larger than a big building sign. It's like who can get the biggest sign. It has been her experience that all of the facilities with setbacks have been required to have screening and landscaping, and for all of us that are driving at street level we don't see those uses. Unfortunately, billboards are elevated off the street level so the opportunity to make them blend in is not there. The setback needs to be significant. In the past 40 years there have been all kinds of restrictions because businesses run wild. She has some comfort level that Lamar probably operated with an extreme conscious and there wasn't a problem, but what happened with Gray was a real foretelling of what can happen when a new company comes into Lincoln. There could be another Gray out there. The Gray company situation brought this to the forefront but she thinks it was just a "freight train coming down the track".

Schwinn does not believe involuntary advertising is an issue. Lots of billboards are entertaining. How many of us looked forward to coming down I-180 after the National Championship and seeing that sign? It gives you pride. We can't just cut these out. I could never vote to propose to eliminate somebody's business or somebody's job. With regard to light pollution, we've all flown into cities at night. You don't look down and see the billboards. The light pollution is coming from the roads, the lights on the roads, the ball diamonds, etc. He believes Lamar's few amendments represent an attempt to reach some kind of consensus on a fairly complicated ordinance. The sign company is taking the heat, but it was our neighbors who leased the ground that the signs are put on. We would not have this problem if our own neighbors hadn't allowed them to use the land to put the signs up. In other words, Schwinn believes there are other people in this city that are equally or more to blame for the proliferation of these signs.

Hopkins agreed that involuntary advertising is not an issue. She can choose a different route if she doesn't want to see a certain billboard. She can also choose whether or not to pay any attention to the billboard. We talk about supply and demand and obviously some regulation is in order. It is a viable way to advertise. Having been involved with a lot of nonprofits, that is the only type of advertising they can afford other than public service.

Bayer stated that over the years he has tried to be consistent about his concern that private sector seems to be set to higher standards than the city government. As far as involuntary advertising, what about the city busses that are painted with signs and advertising? The other issue is the impact of getting rid of the billboards in 10-15 years on small business. It is the only way that smaller businesses can afford to advertise to mass markets; however, he believes there are worthy controls to put in place. He thinks there is a balance. He applauds the fact that the local company is supportive but he does not want to lose site of the fact that their changes being proposed would not allow a new business to come forward. He is curious how a new business might not take the City to court because they can't come in to set up business because of this ordinance.

Motion #1 to amend: Schwinn moved to amend to delete 800' and insert 300' on page 2, line 7, seconded by Duvall. This was an amendment proposed by Lamar. Schwinn noted that the 300' will limit it to no more than one sign per block. Hopkins does not want one sign per block. She would agree with 500-600'. Hopkins moved to amend motion #1 to amend to insert 500' instead of 300', seconded by Duvall. This refers to the distance from a sensitivity zone. Motion to amend Motion #1 to amend from 300' to 500' carried 7-2: Steward, Newman, Schwinn, Taylor, Hopkins, Krieser and Hunter voting 'yes'; Bayer and Duvall voting 'no'. Motion #1 to amend, as amended, which changes line 7 on p.2 from 800' to 500' carried 7-2: Steward, Newman, Schwinn, Taylor, Hopkins, Krieser and Hunting voting 'yes'; Bayer and Duvall voting 'no'.

Motion #2 to amend: Schwinn moved to amend to delete lines 13-14 on page 4 (as proposed by Lamar), seconded by Duvall. Steward moved to amend the amendment to strike "and may not be renewed". This became a friendly amendment. As currently written, if every sign had 10 years and it was left in, 10 years from now half the signs would go away. This takes that out. Steward's rationale is that the other location circumstances must be considered in the re-application. The intent is that at the end of the 10 years, they would have to re-apply.

Hunter suggested adding language that the permit holder can be allowed to reapply for a new permit.

Peo wondered whether the Commission was trying to accomplish the ability to renew under the same provisions as the original application where you have to give up one sign, or is the Commission wanting to allow the person to renew without having to give up additional signage. Peo suggested that the language might be to automatically expire ten years from their date of issuance, unless renewed. Newman thinks this banks billboards.

Bayer believes the intent is to allow a billboard company to not have to get rid of another sign every 10 years. Peo then suggested, "The administrative permits shall automatically expire ten years from their date of issuance, and the permittee may make application for

renewal without removal of an additional sign." This became a substitute motion and carried 9-0: Steward, Newman, Schwinn, Duvall, Taylor, Hopkins, Krieser, Hunter and Bayer voting 'yes'.

Motion #3 to amend: Schwinn moved to approve the proposed amendments requested by Lamar denoted 2. B, C and D (page 4, lines 22, 23 and 24), seconded by Duvall. These amendments mean that if they had a sign, they've got the right to replace it someplace at some point in time. Hopkins believes this allows them to bank the signs for 10 years. But Schwinn thinks it will take awhile before they find another location. Bayer believes this results in the number of signs staying the same. Motion carried 9-0: Steward, Newman, Schwinn, Duvall, Taylor, Hopkins, Krieser, Hunter and Bayer voting 'yes'.

Motion #4 to amend: Schwinn moved to approve the amendment to lines 4 and 5 on page 5 as requested by Lamar, seconded by Steward. Motion carried 9-0: Steward, Newman, Schwinn, Duvall, Taylor, Hopkins, Krieser, Hunter and Bayer voting 'yes'.

Motion #5 to amend: Schwinn moved to amend to delete lines 6-7, page 5, as requested by Lamar, seconded by Duvall. This refers to the time line for removal of the off-premise sign following expiration of the permit. Newman suggested another time frame such as 120 days as opposed to 30 days.

Peo advised that this does not refer to the nonconforming (existing) off-premise sign. This refers to the sign that was installed with the 10-year permit. They would need a reasonable time if they do a renewal to find out if they are going to renew or not; however, you want it removed if they don't renew the permit. Motion failed 1-8: Duvall voting 'yes'; Steward, Newman, Schwinn, Taylor, Hopkins, Krieser, Hunter and Bayer voting 'no'.

Motion #6 to amend: Schwinn moved to amend line 10 on page 5 from 800' to 500', which refers to the minimum distance between an off-premises sign and an existing off-premises sign or nonconforming off-premises sign in all directions regardless of the zoning jurisdiction in which the sign is located. Motion carried 9-0: Steward, Newman, Schwinn, Taylor, Hopkins, Krieser, Hunter, Bayer and Duvall voting 'yes'.

Motion #7 to amend: Schwinn moved to amend to delete lines 13-18 on page 5, seconded by Duvall. This refers to the minimum distance between an off-premises sign and schools, parks or cemeteries. Schwinn does not think there is that much sensitivity to these uses. Steward stated that he will vote against this motion; however, he offered to amend to leave the restriction in place and change the distance to 500' as opposed to 800'.

After further discussion, Schwinn withdrew motion #7 to amend.

Motion #8 to amend: Steward moved to amend line 15 on page 5 to 500 feet (instead of 800), seconded by Duvall, still referring to the distance from schools, parks and cemeteries. Hunter does not believe this will make a difference because most of these

parks have residential housing all the way around them. Motion carried 6-3: Steward, Newman, Taylor, Hopkins, Krieser and Hunter voting 'yes'; Duvall, Bayer and Schwinn voting 'no'.

Motion #9 to amend: Duvall moved to delete lines 23-27 on page 5 and lines 1-6 on page 6, as requested by Lamar, seconded by Schwinn. Schwinn thinks we are already restrictive enough. Steward noted that we are into the study of entrance ways. If you allow this to pass you tie the hands dramatically for the impact of any studies for the entrances to the city. If you want our entrances to look like the entrances to Omaha, then here we go. Hunter believes that in these kinds of situations, you should look at these areas the same way you look at the Interstate--probably areas that need to be kept a little cleaner. Bayer noted, also, that as our city grows, this corridor moves. Motion failed 2-7: Schwinn and Duvall voting 'yes'; Steward, Newman, Taylor, Hopkins, Krieser, Hunter and Bayer voting 'no'.

Motion #10 to amend: Schwinn moved to amend line 9 on page 6 to change 800' to 500', seconded by Krieser. Motion carried 9-0: Steward, Newman, Taylor, Hopkins, Krieser, Hunter, Duvall, Bayer and Schwinn voting 'yes'.

Motion #11 to amend: Schwinn moved to delete "bike trails" from line 12, page 6, seconded by Duvall. Schwinn noted that there are bike trails everywhere in this city. Motion carried 8-1: Newman, Taylor, Hopkins, Krieser, Hunter, Duvall, Bayer and Schwinn voting 'yes'; Steward voting 'no'.

Hopkins noted that one of the requests from the public was to add redevelopment districts as a sensitivity zone. Bayer wants to know how something becomes a sensitivity zone. Peo advised that the ones defined so far were picked and named. If you want to do what Hopkins is referring to, Peo suggested that the Commission could include areas in the "sensitivity zones" that are determined blighted and substandard under the Redevelopment Act. But, Peo believes this is overlapping. Most of redevelopment is in downtown Lincoln. Some of the redevelopment areas are corridors. The other type of restrictions imposed basically overlap a lot of those boundaries. There was no motion.

Motion #12 to amend: Schwinn moved to amend lines 13-14 on page 6, as requested by Lamar, seconded by Duvall. This refers to the lighting issue. Motion carried 9-0: Newman, Taylor, Hopkins, Krieser, Hunter, Duvall, Bayer, Schwinn and Steward voting 'yes'.

Motion #13 to amend: Schwinn moved to amend line 15 on page 6, as requested by Lamar, seconded by Duvall. This refers to down lighting methods. Schwinn wants to do this to give them the flexibility they need for the design. Hunter is concerned about the hazard with lights over people.

Steward suggested that the lighting circumstance is a cost in technology issue versus the sky. Technology is available to do top lighting or bottom lighting. It will cost more to have it be attractive, whether it is a sign that protrudes the frame or not. The down-lighting will control sky brightness. We are voting whether to force the company into a different and probably more expensive technology. This only applies to new signs. We must give them a performance base and let them use the technology and circumstance that is available. Hopkins pointed out that in any given parking lot we talk about all sorts of lights and the bleed, but we don't say it has to be down or up. She just wants to make sure the light is on the sign. She doesn't care if it's up or down.

The Commission asked Hunzeker to respond. Hunzeker suggested that language could be added such as, "...in accordance with design standards", and then Lamar could work with the staff to work out potential design standard solutions to this problem.

The motion became to amend lines 14-15 on page 6, "...If off-premises signs are illuminated, it shall be in accordance with design standards. The lighting shall be controlled by an automatic timing device." Motion carried 9-0: Steward, Newman, Schwinn, Duvall, Taylor, Hopkins, Krieser, Hunter and Bayer voting 'yes'.

Motion #14 to amend: Schwinn moved to amend line 4, page 13, to add the phrase, "and forty-five feet in height", seconded by Duvall (as requested by Lamar). Motion carried 9-0: Steward, Newman, Schwinn, Duvall, Taylor, Hopkins, Krieser, Hunter and Bayer voting 'yes'.

Motion #15 to amend: Newman moved to change 75' to 300' on page 6, line 7, seconded by Steward. This refers to the minimum distance from residential zoning districts. Motion carried 8-1: Steward, Newman, Schwinn, Taylor, Hopkins, Krieser, Hunter and Bayer voting 'yes'; Duvall voting 'no'.

Steward urged that when doing redevelopment or new planning of particular areas, we need a trigger to be sure the implication of this ordinance is taken into account and probably that could be in the context of comprehensive plan language. He wants all of this woven into our comprehensive planning.

Bayer thanked the task force and Mike DeKalb. He stressed that the Planning Commission action today was not to try to belittle any of the action of the task force. The Commission was given the responsibility to amend the ordinance to make it possibly more lenient and more comfortable for the city.

Main motion for approval, as amended, carried 9-0: Steward, Newman, Schwinn, Taylor, Hopkins, Krieser, Hunter, Bayer and Duvall voting 'yes'.

PRELIMINARY PLAT NO. 99026
HIGH POINTE NORTH COMMERCIAL 1ST ADDITION
ON PROPERTY GENERALLY LOCATED AT
NO. 27TH & WILDCAT DRIVE.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 17, 1999

Members present: Steward, Newman, Schwinn, Duvall, Taylor, Hopkins, Krieser, Hunter and Bayer.

Planning staff recommendation: Conditional approval.

Steve Henrichsen of Planning staff submitted a draft copy of covenants which were submitted by Rob Otte on behalf of the applicant.

Kathleen Sellman, Director of Planning, submitted a memo from Rob Otte dated November 17, 1999, stating that he is the representative for the applicant and that the applicant agrees with all conditions of approval as set forth in the staff recommendation.

There was no testimony in opposition.

Public hearing closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION

November 17, 1999

Schwinn moved approval of the Planning staff recommendation of conditional approval, seconded by Duvall and carried 8-0: Steward, Newman, Schwinn, Duvall, Hopkins, Krieser, Hunter and Bayer voting 'yes' (Taylor abstaining).

COMPREHENSIVE PLAN AMENDMENT NO. 94-41;
ANNEXATION NO. 99019;
CHANGE OF ZONE NO. 3202
FROM AG AGRICULTURAL TO R-3 RESIDENTIAL,
O-3 OFFICE PARK AND B-2 PLANNED NEIGHBORHOOD BUSINESS;
SPECIAL PERMIT NO. 1808,
FALLBROOK COMMUNITY UNIT PLAN;
PRELIMINARY PLAT NO. 99023,
FALLBROOK ADDITION;
and
USE PERMIT NO. 124,
ON PROPERTY GENERALLY LOCATED
AT HIGHWAY 34 AND NO. 1ST STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 17, 1999

Members present: Steward, Newman, Schwinn, Duvall, Taylor, Hopkins, Krieser, Hunter and Bayer.

Planning staff recommendation: Deferral for two weeks pending further resolution of the Annexation Agreement.

Proponents

1. Kent Seacrest appeared on behalf of the developer, **NEBCO, Inc.** The track record on NEBCO is very good. It has been run by a very well-known Lincoln family for many, many years. This project is north of the Highlands off US 34 and North 1st Street. This is the very first example of the urban village concept that was approved in the Comprehensive Plan in 1998.

2. Jack Lynch of Olsson Associates explained that this project has been on the boards for nearly 2 ½ years with a team of consultants. The project is a little over 300 acres of an ultimate 600-700 acre new village. The project is built on a transportation system that includes a number of parkways/boulevards with the lanes moving horizontally and vertically in different areas with 100-120 feet between the two lanes with rather large traffic circles or roundabouts at convenient areas to slow down the traffic.

The front doors to the project are the entrance off of Hwy 34, about 3/4 mile west of No. 1st Street and at the location of Pennsylvania Avenue. The parkway system runs through the development. Up north and south are two major parkways leading people into and out of the community. The overland drainage system picks up in the parkways and is carried down to the area along Hwy 34. The land uses are predominately residential, consisting of four different residential types. It has an office component of about 500,000 sq. ft. and a town center of 120,000 sq. ft. The office component is in the three areas along Hwy 34.

The town center has 120,000 sq. ft. of commercial and office space. It is sized to accommodate and serve the needs of the residential community, including a small grocery store, drug store, barber shop, small restaurants--some of the necessities to cater to the residential community. The town center consists of buildings that are basically two and three stories – first story being retail, with the second and third floors being office and residential units. There is an elementary school site located in the ultimate center of the project. The four residential types include your traditional townhouse of 1 and 2-stories, 50 units in the town center on the 2nd and 3rd floors, and the new urbanism area.

The “new urbanism” area is developed much like the older residential parts of Lincoln with alleys in the back. Access would be off the alleys. They could provide detached garage units with another living unit above the garage or a small apartment or granny flat. This development provides a number of outlots to move the building fronts back and forth and provide additional landscaping and trail systems. Lynch stated that the developers have worked extensively with Steve Henrichsen of the Planning staff on developing this component of the residential community. It is served by a major parkway system and roundabouts that the design team is extremely excited about.

Seacrest thanked Dennis Bartels of Public Works for his cooperation because a lot of these concepts do not meet the city design standards. He also gave special thanks to Steve Henrichsen of the Planning Department for his enthusiasm, patience and cooperation in helping get through this new concept.

Seacrest went on to state that from the neighbors’ point of view, the office buildings will be two-story. The neighbors to this project have been very important. Over the last two years, they have had three formal neighborhood meetings and informal conversations with various neighbors. The project shows landscaping and berming up and down No. 1st Street. There are acreages across the street to the east. This development also dedicates 2.5 more times the required right-of-way along the edge. They will not have retail or apartments against the acreages—only housing and offices. This is a very quality development.

Seacrest also advised that this developer worked real hard with the State of Nebraska and got the state to agree to an interchange off of U.S. 34. According to the traffic study, the vast majority of the traffic will come in that entrance and not go down No. 1st Street. Seacrest thanked the state for their preliminary approval.

Seacrest indicated that the developers will continue to work with staff on the annexation issues for two weeks, but he begged and pleaded to be scheduled at the beginning of the agenda since they have waited six hours today.

Seacrest submitted a motion to amend the conditions of approval, highlighting the remaining issues that they have with staff, but they will be working on those in the next two weeks.

With regard to the conditions of approval, Seacrest pointed out that they are removing some trees to create the village center and some water features. The condition for Outlot P requires them to replace the trees and they are not sure they need to replace every tree.

Condition #3.3 refers to a conservation easement over the outlot. The applicant disagrees because the outlot is zoned AG, thus they couldn't put any buildings in there anyway without coming back through the process. As far as wetlands, Seacrest suggests that there is federal law on wetlands and they will be required to mitigate if any fill is done in the wetlands. Seacrest requested that until there is clear city authority in this area, they would prefer to remain within the federal law.

Steward commended the applicant for their bold strategy for a different approach and whether we call it "village concept" or "new urbanism" or just better planning, it seems what they are striving for is a more comprehensive, quality neighborhood community lifestyle. This is the first point at which he has seen the plans and drawings and he likes what he sees. With regard to "new urbanism", literally speaking, one might think the commercial center might be more "centered" where more pedestrian access is encouraged and less automobile access. He asked whether the developer had considered more central locations for the commercial center. Why is it on the edge? Seacrest explained that the extra green areas are office complexes to the east and to the west, so it is not on the edge. It is toward the south end of the campus. To feel good about the retail surviving, they believe the commercial center needs to be close to the offices. When we count the population of the community during the day, we really have probably put it smack in the center. It is believed that a few of our retailers will feel more comfortable if Hwy 34 traffic can see the center and might come in.

With regard to sustainable development issues, Steward suggested that one might believe that lots that were facing north/south would have better solar access and provide a greater degree of living spaces within typical track houses, such as in the townhome sites. Steward was curious as to how far the developer has gone in their thinking into sustainable living issues. Jack Lynch agreed that the north/south orientation is a good question. The problem in this area where the majority is residential is that all the contours are marching north and south and they have a tough time bucking the grades going up and down the hills. There are a lot of walk-out opportunities. The decision was to attempt to get a two-story school with a community component.

Hunter referred to the connection issue that the Commission went through on the Black Forest Estates development, and wondered whether the area to the north is going to be developed and whether there will be access to the property to the north. Seacrest advised that there will be an arterial road at the top of the project that will connect to N.W. 12th. There are three exits to the arterial to the east and several to the arterial to the north, etc. Hunter brought this up because of all the discussion during the Colonial Hills and Black

Forest debate about people living on the interior and having to take so long to get out. Does this developer own the property to the north? Seacrest indicated that this developer owns a little bit but most of it is owned by the neighbor to the north. He believes this development shows a lot of connectivity.

Seacrest stated that most of the residential is single family.

Hunter asked whether there would be some discussion as to the payment for utility improvements. Seacrest advised that the annexation agreement covers those issues. There is one sewer issue they are still discussing with the staff.

The homes will be a variety of sizes. Some of the new urbanism homes will be a little bit smaller; the lot sizes vary and get larger as you go north and northwest. There will be townhomes; granny flats; and housing above the retail in the town center. Given the amount of infrastructure and the wide boulevards it will be somewhat upscale from the Highlands. North Lincoln has not experienced this type of development.

Opposition

1. Rich Grundman testified on behalf of many of the acreage owners directly to the east. He indicated that they are not really in opposition, and he agrees that the applicant and staff have kept them informed. Their concern is Lot 4 that borders the property to the east. They would like a restriction of two stories in height. A walkout facing away from the neighbors to the east at third level is agreeable. They have a footprint of the office space and they do not want to see that footprint change. Within that footprint, they would like to see the buildings moved into the western two-thirds to keep the buildings as far away from the property owners to the east. They would like a 300' setback from the actual building. They have already pushed the footprint back 50' but they want the building to be 300' back. The neighborhood is otherwise generally in support.

Another issue as a result of this development and the proposed 14th & 27th Street is some discussion about moving a main arterial from 1st Street to 14th Street up to Pennsylvania to connect those two developments. That would put an arterial down the middle of their low density area. These owners want the arterial to remain at Fletcher or positioned somewhere else, but not down the middle of their low density development area.

Newman noted that the Health Department response refers to abandoning a well and she does not see it referred to in the conditions. Henrichsen agreed to add that as a condition of approval.

Response by the Applicant

Seacrest would like to accommodate the neighbors, but the 300' for the building setback ties their hands. They could put a series of buildings on that outlot with the parking in the

middle to minimize the exposure of parking lots. They are not prepared to specify the location of the building at this point and they would like to try to stay flexible. With the 115' road right-of-way, the plans show and include a berm system with vegetation right on the right-of-way. The quality of the buildings will be high and he is not sure they want to put parking next to the street.

Bayer inquired about the timeline for breaking ground. Seacrest is hopeful that the Commission will not delay their action another two weeks from now. They would like to be grading if the weather cooperates and it is definitely a winter/spring construction season for the first phase.

Newman moved to continue public hearing with administrative action on December 1, 1999, seconded by Steward and carried 9-0: Steward, Newman, Schwinn, Duvall, Taylor, Hopkins, Krieser, Hunter and Bayer voting 'yes'. The Chair requested that this continued public hearing be scheduled immediately following the Consent Agenda on December 1, 1999.

SPECIAL PERMIT NO. 1794

FOR A WIRELESS COMMUNICATIONS TOWER

ON PROPERTY GENERALLY LOCATED AT 445 'A' STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: November 17, 1999

Members present: Steward, Newman, Schwinn, Duvall, Taylor, Hopkins, Krieser, Hunter and Bayer.

Steve Henrichsen of Planning staff recommended that this item be indefinitely postponed as there are several issues which need to be worked out with the applicant and staff. Once the application is complete, the staff will place it back on the agenda.

Steward moved to place on pending, seconded by Newman and carried 9-0: Steward, Newman, Schwinn, Duvall, Taylor, Hopkins, Krieser, Hunter and Bayer voting 'yes'.

CHANGE OF ZONE NO. 3209

FROM I-1 INDUSTRIAL TO R-3 RESIDENTIAL

AND FROM I-1 INDUSTRIAL, B-1 LOCAL BUSINESS

AND H-4 GENERAL COMMERCIAL TO P PUBLIC

ON PROPERTY GENERALLY LOCATED ALONG

WEST VAN DORN IN THE VICINITY OF HWY 77

AND SOUTH FOLSOM STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: November 17, 1999

Members present: Steward, Newman, Schwinn, Duvall, Taylor, Hopkins, Krieser, Hunter and Bayer.

The Clerk announced that the Director of Planning has requested deferral until January 26,

2000. Such motion was made by Steward, seconded by Schwinn and carried 9-0: Steward, Newman, Schwinn, Duvall, Taylor, Hopkins, Krieser, Hunter and Bayer voting 'yes'.

There was no testimony in support nor in opposition.

CHANGE OF ZONE NO. 3210
FROM R-3 RESIDENTIAL TO AGR AGRICULTURAL RESIDENTIAL,
AG AGRICULTURAL AND P PUBLIC
ON PROPERTY GENERALLY LOCATED
ON BOTH SIDES OF CODDINGTON AVENUE SOUTH
OF WEST VAN DORN STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: November 17, 1999

Members present: Steward, Newman, Schwinn, Duvall, Taylor, Hopkins, Krieser, Hunter and Bayer.

The Clerk announced that the Director of Planning has requested deferral until January 26, 2000. Such motion was made by Steward, seconded by Schwinn and carried 9-0: Steward, Newman, Schwinn, Duvall, Taylor, Hopkins, Krieser, Hunter and Bayer voting 'yes'.

There was no testimony in support nor in opposition.

There being no further business, the meeting was adjourned at 6:45 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on December 1, 1999.